



Feminist Judgments of Aotearoa New Zealand Te Rino: A Two-Stranded Rope

U3A, 29 April 2019

Dr Rhonda Powell, Athene Trust Law



Female lawyers

- 1897 First female law graduate, Ethel Benjamin
- 1975 First female judge, Dame August Wallace
- 2015 New Zealand Court of Appeal sat with first ever all female bench
- Majority of Supreme Court Judges are currently women

Women represent:

- 60% law graduates and 50% of practicing lawyers
- 24% of law firm partners, 12% Queens Counsel and 35% of judges



Māori lawyers

- 15% of the population
- 6.1% of legal profession
- about 10% of the judiciary identify as Māori

Only 1.6% of the legal profession are Māori women



Just adding female judges

“One of the objectives of liberal feminism has been to get women into positions of power, but it has not developed any theory of what women should do when they get there.”

(R Hunter, ‘Can Feminist Judges Make a Difference?’ (2008) 15
International Journal of the Legal Profession 7-36, 7)



Project Goals

- Produce a collection of ‘feminist’ judgments to real New Zealand cases from a variety of legal areas and in a variety of legal tribunals
- Include the voices of Māori women and provide a space for them to exercise authority within the project
- Demonstrate how judges can do more to further gender equality and race equality without radical overhaul of the legal system



What is feminism?

A belief that men and women are equal and a desire to resist and undermine the perpetuation of gender bias through the law.



Our invitation

What if a group of scholars were able to write the “missing” feminist judgment in key cases?

Can we put theory into practice in judgment form?

What would these judgments look like?

What impact would they have?

What lessons would we learn?



The journey

- Built team and set timeframe
- Advertised and selected participants – September 2015
- Obtained funding from NZ Law Foundation – December 2015
- Judgment writing workshop – February 2016
- Drafts prepared and circulated [George born August 2016]
- Workshops to discuss drafts – September 2016
- Drafts finalised and edited
- Published December 2017



Feminist Judgments of Aotearoa New Zealand Te Rino: A Two-Stranded Rope

EDITED BY
Elisabeth McDonald
Rhonda Powell
Māmari Stephens
Rosemary Hunter



Feminist Judgments of Aotearoa New Zealand Te Rino: A Two-Stranded Rope

EDITED BY
Elisabeth McDonald
Rhonda Powell
Māmari Stephens
Rosemary Hunter









What do judges do?

- Determine facts – what happened?
- Determine and develop the common law
- Interpret statutes – what do the words mean?
- Apply law to factual situations to reach outcomes in legal disputes
- Exercise discretion



What would we expect feminist judges to do?

- Ask the 'woman question'
- Take into account women's interests
- Listen to women's perspectives
- Tell women's stories
- Challenge gender bias
- Contextualise legal decisions
- Address injustice and inequality
- Define and uphold mana wahine

(Hunter, 2008, 10-15)



Considering the impact on women

Hallagan v Medical Council (High Court 2010)

- Duties of a doctor who has a conscientious objection to abortion when approached by a woman seeking an abortion
- Original judgment provided very little social context
- No consideration of impact on women's access to abortion
- Feminist judge contextualised the interpretation of legislation that was intended to ensure access to abortion



Listening to women's perspectives

R v Wang (Court of Appeal 1990)

- Mrs Wang was a Chinese immigrant who killed her husband
- Case about whether defence of self-defence could be put to the jury
- Original judge did not describe the facts in terms of domestic violence
- Feminist judge obtained trial records and exposed an history of extreme violence over many years, unmet pleas for help, recent threats to kill her family, and plans to implement the threats
- Mrs Wang's story is relevant context as to what was 'reasonable' in her circumstances



Uphold mana wahine

- Claiming visible space for Māori women, Māori ways of life
- Identifying rights and obligations within Māori culture
- Placing Māori concerns and Māori people at the centre of the factual analysis
- Applying legal tests so as to acknowledge Māori everyday reality
- Paying respect to Māori values and principles
- *Bruce v Edwards* (Court of Appeal 2002)



Address injustice and inequality

V v V (Family Court 2002)

- Property (Relationships) Act 1976, s 15 – compensation for economic disparity due to division of functions in the relationship
- Original decision allowed the claim but adopted a complicated formula for deciding the quantum, which undermined the outcome
- \$38,660 out of a relationship property pool of \$700,000
- Feminist judge acknowledged Ms V's lived reality, including impact of childcare arrangements on her ability to get work, considers gendered purpose of legislation to address inequality, considered overall justice,
- awarded \$120,000



Challenge gender bias

Director of Human Rights Proceedings v Goodrum (2002 HRRT)

- Experienced female real estate agent passed over for less qualified male
- Told that she did not possess the essential qualities – physical stature, X-factor and she was not a ‘team player’
- Feminist judge showed how unwritten requirements subjective and susceptible to implicit gender bias
- Research revealed unpublished dissent (by female Māori tribunal member) – evidence of how women’s voices can be subdued



Learning points

- Reasoning as important as the result
- Facts are as important as the law
- Facts are “construed” not given
- Importance of telling people’s stories both to the court and by the court









The Law Foundation

NEW ZEALAND

SUPPORTING INDEPENDENT
LEGAL THINKING.

Mamari Stephens

RNZ



RNZ

Lectrum



Final words

“... Lawyers of energy and courage must take up the task of imagining how the law can evolve, of leading the evidence and making the arguments that sketch out a different future for the law. If the arguments are not made, if the evidence is not led, the law will not develop as it should.”

The Right Honourable Dame Helen Winkelmann GNZM

Questions?

Dr Rhonda Powell
LLB(Hons), BA, LLM, DPhil
Athene Trust Law
rhonda@athene.co.nz
021 483 004

